

PRESERVATION AREA BY-LAW

BY-LAW # 452-09

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The Council of the Town of Sussex, under authority vested in it by the Municipal Heritage Preservation Act, Chapter M-21 Acts of New Brunswick, 1978, enacts as follows:

1 TITLE

- i) This By-law may be cited as the “Preservation Area By-Law”
- ii) The provisions of this by-law apply to the entire area within the Town limits of the Town of Sussex.

2 PURPOSE

The purpose of this By-Law is to regulate standards for structures in approved preservation designated areas by this by-law.

3 INTERPRETATION

In this by-law:

“*Act*” means the Municipal Heritage Preservation Act, 1978, Statutes of New Brunswick, Chapter 21.1;

“*alter*” means to change in any manner, structurally or otherwise, in whole or in part, the exterior of a building or structure and includes to restore, rehabilitate, preserve, renovate, repair, construct or to change, in any manner, the design of such building or structure;

“*alteration*” means any change set out in the definition of alter.

INTERPRETATION (*cont'd*)

“Appeal Board” means the Planning and Assessment Appeal Board;

“appurtenances” includes, but is not limited to additions, decks, walls, fences, light fixtures and standards, steps, paving and signs;

“archaeological resource” means a place or area where the evidence of past human activity is or was located in, on, below or above the ground, or lands under water, of which the recovery and understanding of this evidence can be achieved using archaeological methods.

“Board” means the Preservation Review Board appointed pursuant to Section 8 of the Act;

“Certificate” means a Certificate of Appropriateness provided for by the Act;

“character defining elements” means includes but is not limited to the materials, forms, locations, spatial configurations, uses and cultural associations or meanings that contribute to the heritage value of a historic place, which must be retained in order to preserve its heritage value.

“conservation” means all actions or processes that are aimed at safeguarding the character-defining elements of a cultural resource so as to retain its heritage value and extend its physical life. This may involve “Preservation”, or “Rehabilitation”, “Restoration”, or a combination of these actions or processes.

“conservation area” means that conservation area established under Section 5 of the Act and defined in Section 4 of this By-law.

“contemporary materials” includes, but is not limited to, angel stone, aluminium, pre-cast concrete, mirrored glass panels and any other materials not available for buildings constructed on or prior to 1915;

“Council” means the Mayor and Councillors of the Town of Sussex;

INTERPRETATION (*cont'd*)

“design” means general appearance of the exterior of a building or structure including size, shape, exterior surface textures, colours, decorative features, and standards of maintenance, qualities and types of exterior materials, landscaping, relationship of building or structure to its site, and for the purposes of this By-law signage located on the interior which is visible to be read from the exterior shall be included as well as other matters relating to the nature of the exterior appearance;

“development” means the erecting, placing, relocating, removing, renovating, restoring, demolishing, altering, repairing or replacing of the exterior of a building or structure, in whole or in part, other than traffic control devices or statutory notices, within a Preservation Area;

“façade opening” means any penetration of the solid material comprising the building façade. This includes window openings, doors and archways. The area devoted to façade opening is measured on an orthographic projection from the façade elevation;

“façade opening/wall ratio” means the ratio between the area of the façade devoted to windows and door openings and the area of the façade composed of opaque materials (wall);

“height of a building or structure” means the vertical distance from the ground at the centre of the building façade to the highest point of the coping of a flat roof between the eaves and a ridge or to the deck line of a mansard roof or the average height between the plate and ridge of a gable, hip, or gambrel roof and excluding such structures as elevator penthouses, chimneys, smoke stacks and steeples;

“heritage value” means the aesthetic, historic, scientific, cultural, social or spiritual importance or significance for past, present or future generations. The heritage value of a historic place is embodied in its character-defining materials, forms, design, location, spatial configurations, uses and cultural associations or meanings.

INTERPRETATION (*cont'd*)

“heritage conservation area” means that heritage conservation area established under Section 5 of the Municipal Heritage Preservation Act and defined in Section 4 of this By-law.

“historic place” means a structure, building, group of buildings, district, landscape, archaeological site or other place that has been formally recognized for its heritage value.

“intervention” means any action, other than demolition or destruction, that results in a physical change to an element of a historic place.

“listing agreement” means the agency agreement formed between a vendor as Principal and their agent regarding the trade of property and includes the New Brunswick Real Estate Board’s standard listing agreement form and includes those agreements which are listed on the New Brunswick Real Estate Board’s MLS (“MLS LISTINGS”) and, unless the context indicates otherwise, exclusive listings.

“maintenance” means routine, cyclical, non-destructive actions necessary to slow or prevent the deterioration of a building, structure or historic place. It entails periodic inspection; routine, cyclical, non-destructive cleaning; minor repair in compatible traditional materials and details of similar profiles as the original. It does not include any alteration, design change and/or replacement where such replacement involves a change in design or material. For the purpose of this By-Law, the cleaning of a building or structure is deemed to constitute an alteration to the exterior surface texture and is not considered maintenance.

“minimal intervention” means the gentlest approach with the least physical intervention, which allows functional goals to be met.

“multiple listing service” means a real estate data base listing service operated by a member of a real estate board as in a registered trade mark of the Canadian Real Estate Association.

“municipality” means the Town of Sussex;

INTERPRETATION (*cont'd*)

“owner” means the registered owner of a building or structure within a Preservation Area, the lessee thereof, or a person in possession of a bona fide contract to purchase same;

“pilaster” means an upright architectural member that is rectangular in plan and is structurally a pier but architecturally treated as a column and that usually projects a third of its width or less from the wall;

“preservation” means the action or process of protecting, maintaining and/or stabilizing the existing materials, forms and integrity of a historic place, or of an individual component, while protecting its heritage value.

“Preservation Area” means a Preservation Area established under Section 5 of the Act and defined in Section 4 of this by-law;

“rehabilitation” means the action or process of accurately revealing, recovering or representing the state of a historic place, or of an individual component, through repair, alterations and/or additions, while protecting its heritage value.

“restore” means any actions undertaken which return a building or structure to its condition and appearance at the specific period in time at which it was originally constructed;

“restoration” means the action or process of accurately revealing, recovering or representing the state of a historic place, or an individual component as it appeared at a particular period in its history, while protecting its heritage value.

“sandblasting” means a technique for the cleaning of buildings or structures of masonry construction which employs abrasive particles under pressure of water or air;

“setback” means the distance between the street line and the front building line of a principal building or structure projected to the sideline of the lot;

“standards” means the standards of development defined in this by-law;

INTERPRETATION (cont'd)

“street line” means the dividing line between a lot and the right-of-way of a street, road, highway, avenue, lane, court or private easement providing generally the primary access to and egress from the property abutting along its length;

“structural alteration” means any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, girders, etc., which results or could result in a change in the exterior walls or roof of such building or structure;

“traditional materials” include, but is not limited to, wood, brick, stone, but excludes those materials not commonly used prior to 1915;

“yard” means an open space on the same lot with a building, such space being unoccupied and unobstructed from the ground upward;

“yard, rear” means a yard extending across the full width of the lot between the rear most building structure and the rear lot line;

“yard, front” means a yard extending across the full width of the lot between the street line and any building or structure;

“yard, side” means the yard between the side lot line and the parts of the building or structures nearest thereto and extends from the street line to the rear line of said lot.

4 PRESERVATION AREA AND APPLICATION OF BY-LAW

- i) That portion of the Town of Sussex, described in the attached Schedule “B”, which forms part of this by-law, is hereby established as a Preservation Area(s) to be known as the Town of Sussex Preservation Area.
- ii) A Preservation Area(s) can only be established by by-law upon unanimous consent of the property owner(s) in the proposed said area.

PRESERVATION AREA AND APPLICATION OF BY-LAW (cont'd)

- iii) This by-law shall apply to the Preservation Area(s), established by subsection (i) hereof.

5 ADMINISTRATION

This by-law shall be administered by a Preservation Review Board, in accordance with Section 9 of the Act.

6 GUIDANCE STANDARDS

- i) The Board shall acquire or compile a register of all buildings or structures in the Preservation Area.
- ii) In order to provide guidance to the public on standards of design for developments in the Preservation Area, the Board shall maintain the file or files containing drawings, photographs and other descriptive or pictorial items showing structures, architectural styles and materials appropriate to the area.
- iii) Such registers and files shall form part of the records of the Board.

7 CERTIFICATE OF APPROPRIATENESS

Subject to Section 4,

- i) No person shall carry out or cause to be carried out any development within the Preservation Area, with the exception of maintenance, and whether a building permit or demolition permit has been issued or not, until a Certificate of Appropriateness has been issued by the Board.

CERTIFICATE OF APPROPRIATENESS(cont'd)

- ii) No development, in accordance with the Certificate of Appropriateness, shall be carried out until every right of appeal under the Act has been exercised in the particular case or until the time prescribed by the Act for the exercise of that right of appeal has expired.

8 APPLICATION FOR CERTIFICATE

- i) An application for a Certificate of Appropriateness shall be filed with the Secretary of the Board who shall not accept any application which is incomplete or appears to be incomplete.
- ii) Any application shall be made by the owner of the property for which the development is proposed, in the form prescribed by the Board and shall include:
 - a. in the case of an existing building or structure, development plans and specifications which describe in detail any proposed demolition or alterations to such building or structure and appurtenances thereto, including additions, deletions, design changes, repairs, excluding maintenance, replacements, etc., and any proposed changes to the existing open spaces, yards, driveways, landscaping and other site details; or
 - b. in the case of new construction, development plans and specifications of the proposed building or structure and appurtenances thereto, including details relating to the site such as landscaping, open spaces, yards, driveways, etc..
- iii) The Secretary shall submit the completed application to the Board for its consideration.

APPLICATION FOR CERTIFICATE (cont'd)

- iv) Prior to deciding on an application for a Certificate of Appropriateness, the Board shall take such action as may be reasonably required to inform the applicant and all such other persons, as the Board may deem appropriate, that the application is pending and shall give such persons an opportunity to be heard. Failure of any person to receive notice, as provided herein, shall not invalidate any action by the Board.
- v) Where the Board deems it necessary, a public hearing on an application may be conducted by the Board.
- vi) If the Board determines that the proposed development is appropriate and that, in the opinion of the Board, the development complies with the provisions of the Act, this by-law and the provision of any other Act respecting zoning and planning development and all by-laws and regulations thereunder, the Board shall issue a Certificate of Appropriateness to the applicant.
- vii) The Certificate of Appropriateness shall be numbered and signed by the Chairperson or his/her designate stating that the proposed development for which application has been made is approved by the Board, or the Appeal Board on appeal and bearing the date of approval and any terms and conditions on which the approval is granted and which the Board considers necessary for the standards to be met.
- viii) The Board may refuse to issue a Certificate of Appropriateness where it considers that the development plans and specifications submitted as part of the application are incomplete or where such plans and specifications show that the proposed development, with the exception of demolition, is incompatible with the standards of development prescribed in Section 8.
- ix) If the Board determines that a Certificate of Appropriateness should not be issued, it shall forthwith notify the applicant of such determination.

APPLICATION FOR CERTIFICATE *(cont'd)*

- x) An appeal from a decision of the Board as to any matter for which an appeal applies under the Act, may be made to the Planning Appeal Board in accordance with the provisions of Sections 15 and 16 of the Act.
- xi) The exterior of any existing building or structure or any part thereof and any appurtenances thereto within the Preservation Area shall not be altered, reconstructed or otherwise changed, and no Certificate of Appropriateness shall be issued for any development, with the exception of demolition, unless the development conforms to the standards set forth in Section 10.
- xii) The erecting or placing of a new building or structure within a Preservation Area shall be in compliance with the standards prescribed in Section 11.

9 REQUIREMENT TO MEET STANDARDS

- i) The exterior of any existing building or structure or any part thereof and any appurtenances thereto within the Preservation Area shall not be altered, reconstructed preserved, rehabilitated, restored, or otherwise changed, and no Certificate shall be issued for any conservation or development with the exception of demolition, unless the development conforms to the standards for Conservation set forth in Section 10.
- ii) The erecting or placing of a new (Infill) building or structure within the Preservation Area shall be in compliance with the Standards for New (Infill) Construction set forth in Section 11.

10 STANDARDS FOR CONSERVATION OF EXISTING BUILDINGS

- i) Any development on an existing building in a Preservation Area, with the exception of new (infill) construction or demolition, shall use one or a combination of the following three conservation treatments:
 - a. Preservation of compatible historic materials, detailing and values; or
 - b. Rehabilitation of compatible historic character-defining elements and values; or
 - c. Restoration of historic character defining elements complete with their appropriate detailing and values to a pre-1915 appearance, when based upon sufficient evidence.

- ii) Any development on an existing building in a Preservation Area, with the exception of new (infill) construction or demolition, shall comply with the following regulations:
 - a. Conserve the heritage value of a historic place. Do not remove, replace, or substantially alter its intact or repairable character-defining elements. Do not move a part of a historic place if its current location is character-defining.
 - b. Conserve changes to a historic place which, over time, have become character-defining elements in their own right.
 - c. Conserve heritage value by adopting an approach of minimal intervention.
 - d. Recognize each historic place as a physical record of its time, place and use. Do not create a false sense of historical development by adding elements from other historic places or other properties or by combining features of the same property that never coexisted.
 - e. Find a use for a historic place that requires minimal or no change to its character-defining elements.

**STANDARDS FOR PRESERVATION, REHABILITATION & RESTORATION
PROJECTS (cont'd)**

- f. Protect and, if necessary, stabilize a historic place until any subsequent intervention is undertaken. Protect and preserve archaeological resources in place. Where there is a potential for disturbance of archaeological resources, take mitigation measures to limit damage and loss of information.
- g. Evaluate the existing condition of character-defining elements to determine the appropriate intervention needed. Use the gentlest means possible in any intervention. Respect heritage value when undertaking an intervention.
- h. Maintain character-defining elements on an ongoing basis. Repair character-defining elements by reinforcing their materials using recognized conservation methods. Replace in kind any extensively deteriorated or missing parts of character-defining elements, where there are surviving prototypes for reference.
- i. Any intervention needed to preserve character-defining elements shall be physically and visually compatible with the historic place, and identifiable upon close inspection. Document any intervention for future reference.

ADDITIONAL STANDARDS FOR REHABILITATION

- j. Repair rather than replace character-defining elements. Where character-defining elements are too severely deteriorated to repair, and where sufficient physical evidence exists, replace with new elements that match the forms, materials and detailing of sound versions of the original character-defining elements. Where there is insufficient physical evidence, make the form, material and detailing of the new character-defining elements compatible with the character of the historic place.

ADDITIONAL STANDARDS FOR REHABILITATION (cont'd)

- k. Conserve the heritage value and character-defining elements when creating any new additions to a historic place or any related new development. Make the new work physically and visually compatible with and respectful of the historic place, and distinguishable from the historic place upon close inspection.
- l. Create any new additions or related new development so that the essential form and integrity of a historic place will not be impaired if the new work is removed in the future.

ADDITIONAL STANDARDS FOR RESTORATION

- m. Repair rather than replace character-defining elements from the restoration period. Where character-defining elements are too severely deteriorated to repair and where sufficient physical evidence exists, replace them with new elements that match the forms, materials and detailing of sound versions of the same elements.
- n. Replace missing features from the restoration period with new features whose forms, materials and detailing are based on sufficient physical, documentary and/or oral evidence.

11 STANDARDS FOR NEW (INFILL) DEVELOPMENT

- i) Any development, with the exception of demolitions, within the Preservation Area shall comply with the following regulations;

For the purpose of this Section 11 the following definitions apply:

“neighbouring buildings or structures” means the existing buildings or structures fronting upon the same side of the street or streets and adjacent or most proximate to the development;

STANDARDS FOR NEW (INFILL) DEVELOPMENT (cont'd)

“side yard ratio” means the ratio of the width of the side yard between the side lot line and the parts of the building or structure nearest thereto and the total width of the lot.

- a. Where the setbacks of neighbouring buildings or structures are uniform, the setback of the development shall conform thereto.
- b. Where the setbacks of neighbouring buildings or structures are not uniform:
 - (i) if the setback of one of the neighbouring buildings or structures is the same as the setback of the building or structure adjacent or most proximate to it, then the setback of the development shall conform thereto, or
 - (ii) if the setback of the neighbouring building or structure on either side of the development is not the same as setback of those buildings or structures adjacent or most proximate to it, then the setback of the development shall conform to that of either of the neighbouring buildings or structures.
- c. The side yard ratio on each side of a development shall conform to the relative side yard ratios of either of the neighbouring buildings or structures so as to maintain the pattern of open and occupied spaces.
- d. The height of a development shall not be less than 80 percent and not more than 120 percent of the average height of existing buildings constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street.

STANDARDS FOR NEW (INFILL) DEVELOPMENT (cont'd)

- e. The height/width ratio of the façades of a development shall not vary by more than 10 percent from the height/width ratio of the façades of existing buildings constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street.
- f. Notwithstanding 11(ii)(e) the Board may issue a Certificate of Appropriateness for a building or structure proposed for a parcel of land of a width greater than the average width of building lots within the same block where such proposed building or structure is too wide to comply with the height/width ratio set forth in 11(ii)(e) provided that, the Developer shall cosmetically divide the façade of such building or structure with pilasters or other design techniques into sections or bays which do conform to the required height/width ratio.
- g. The allowable façade opening/wall ratio for the façade of a development shall not vary by more than 10 percent from the façade opening/wall ratio of the façades on existing buildings of the same type or style constructed prior to 1915 and not subsequently altered, and located within the same block as the development, fronting upon the same side of the street.
- h. The dimensions of the windows in a development shall not vary by more than 10 percent from the dimensions of the windows in existing buildings of the same type or style constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street.
- i. The roof or roofs of a development in regard to their direction, pitch and arrangement shall conform to those on existing buildings of the same type or style constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street.

STANDARDS FOR NEW (INFILL) DEVELOPMENT (cont'd)

- j. The size, shape and prominence of a porch, entrance projection or doorway in a development shall be similar to those found on existing buildings of the same type or style constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street.
- k. A development shall use traditional detailing and traditional materials for its exterior façade s in keeping with those found on existing buildings or buildings of the same type or style constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street. The Board may permit the use of contemporary materials where their appearance is compatible with the appearance of traditional materials and detailing.

When reviewing proposals to determine compatibility of contemporary materials, the Board shall consider but not be limited to the following:

- Proposed construction assembly detailing and the degree that proposed matches the appearance of the original;
- Proposed cross-sectional profiles and the degree that proposed matches originals.
- Proposed texture and finish and the degree that proposed matches the original
- When cost is used as a factor, then long-term operating and life-cycle cost, as well as embedded energy, landfill impact, employment generation and spin-Offs shall be used rather than short term capital costs.

STANDARDS FOR NEW (INFILL) DEVELOPMENT (cont'd)

- ii) In the case where there is no existing building or structure constructed prior to 1915 and located within the same block as the development, fronting upon the same side of the street, the standards of this Section are deemed to relocate to a building or structure constructed prior to 1915 which is most proximate to the development.
- iii) Mid block developments which do not front on any street or streets are exempt from the standards set forth in this Section.

12 DEMOLITION, REMOVAL OR RELOCATION

- i) Subject to 13(vi) no building or structure within a Preservation Area, or any appurtenances thereto, shall be demolished, removed or relocated and no Certificate for such development shall be issued until,
 - a. such building or structure has been identified by the Board as incompatible with the Preservation Area in terms of the standards prescribed in Section 10 and/or 11; or
 - b. the owner has made a publicly advertised Offer to Sell such building or structure and the land pertaining thereto, for a period of not less than six months, in accordance with the procedure set forth in 13(ii), and no contract has been made for the sale of the property; or
 - c. the owner has listed for sale such building or structure and the land pertaining thereto with a Multiple Listing Service® and has entered into a contract thereto with a licensed real estate agent or broker within the Town for a period of not less than six months, (the Listing Agreement), in accordance with the procedure set forth in 13(ii), and no contract has been made for sale of the property.

DEMOLITION, REMOVAL OR RELOCATION (cont'd)

- ii) The owner, who is making an Offer to Sell or who has entered into a Listing Agreement for such building or structure shall:
 - a. Before publishing the Offer to Sell, file such Offer to Sell with the Secretary and at his own expense, cause a Notice of the Offer to Sell to be published in a newspaper of general circulation in the municipality such Notice to appear at least once a month for a period of not less than six calendar months and ensure that the Offer to Sell is at a price based on the real and true value of the property; or
 - b. Before entering into a contract with a Multiple Listing Service file such Listing Agreement with the Secretary and at his own expense ensure that the listing on MLS runs continuously for a minimum of not less than six calendar months and ensure that the Listing Agreement is at a price based on the real and true value of the property.
- iii) The Secretary, upon receiving the Offer to Sell pursuant to 13 (ii)(a), or the Listing Agreement pursuant to 13(ii)(b), shall forthwith notify the Minister responsible for the Municipal Heritage Preservation Act.
- iv) The Notice of the Offer to Sell shall:
 - a. appear in the real estate section of the newspaper;
 - b. be at least one column in width;
 - c. have at the top of the ad a headline in 24 pt. type in capitals, indicating the name of the Preservation Area that the property is located within;
 - d. use 8 pt. type in the text of the ad;
 - e. identify the property and its location;
 - f. state the offering price;
 - g. state the date the Offer to Sell is to begin, which date shall not be earlier than the date such offer was filed with the Secretary pursuant to 13(ii)(a);

DEMOLITION, REMOVAL OR RELOCATION (cont'd)

- h. include a black and white photograph of the property, to be a minimum of the width of the column by whatever necessary height, that clearly illustrates the character defining elements of the property; or

- v) The Listing Agreement shall be in the form principally used by licensed real estate agents and brokers within the Town of Sussex and shall cause the property to:
 - a. be listed with a licensed real estate salesperson who is a member of the Town of Sussex Real Estate Board;
 - b. be listed via the Multiple Listing Board® ;
 - c. adhere to the Town of Sussex Real Estate Board's Rules and Regulations and its policies for the suitable presentation of the property for marketing purposes;
 - d. include a photograph representing a clear and accurate representation of the property for sale and its heritage character defining elements; and
 - e. exclusive listings with a Realtor shall not be acceptable for the purposes of this By-Law.

- vi) If the Offer to Sell or the Listing Agreement is at a price in excess of the most recently assessed value of the property, under the Assessment Act (Chapter A-14 of RSNB) the Board shall refuse to approve the Notice or the Listing Agreement until such time as the owner has amended the Notice or the Listing Agreement accordingly or the owner has established to the satisfaction of the Board that the price is reasonable under the circumstances using the procedure indicated in Section 14 of this By-Law.

- vii) A Certificate of Appropriateness for demolition shall be valid for a period of not more than 180 days from the date of issuance.

13 TERMS AND CONDITIONS OF CERTIFICATES FOR DEMOLITION

- i)
 - a. If, in the opinion of the Board, the nature of a property to be sold is such that it would require a publicly advertised Offer to Sell or a Listing Agreement of more than six months duration in order to attract potential purchasers, the Board may require the Notice of Offer to Sell or the Listing Agreement referred to in Section 12(i)(b) and Section 12(i)(c) to remain in effect for a period not exceeding twelve months.
 - (i) b. Where the Board makes such a determination it shall notify the owner in writing of its decision and it shall amend any published notice to sell or the Listing Agreement and shall pay the additional costs of the advertisement.
- ii) If at the end of the Offer to Sell or the Listing Agreement period, the property has not been sold, the owner shall so notify the Board, and the Board may issue a Certificate to demolish a building or structure, subject to such terms and conditions as the Board deems necessary for the purpose of preserving any part(s) or character defining element(s) of such building or structure or appurtenances thereto, including entire façades which are of historic or architectural value or interest.
- iii) Upon issuing a Certificate approving the demolition, removal or relocation of a building or structure or any part thereof, the Board shall forthwith, at its own expense,
 - a. cause a notice to be published in a newspaper of general circulation in the municipality stating that the building or structure in question has been approved for demolition, removal or relocation, the date of issue of the Certificate and outline the statutory right of appeal which exists against the Board's decision; and
 - b. notify the Minister responsible for the Municipal Heritage Preservation Act that the Certificate has been issued.

14 REAL AND TRUE VALUE

- i) If the owner wishes to Offer to Sell or enter into a Listing Agreement for a price higher than the most recent assessed value of the property, under the Assessment Act (Chapter A-14 of RSNB) an appraiser who is mutually agreeable to the owner and the Board and who is a member in good standing of the New Brunswick Association of Real Estate Appraisers, with an AACI stature shall determine the real and true value of the property, to which each party must agree to be bound, with cost of such determination to be shared equally by the two parties and such value shall be the average of the values determined by the following three approaches: i) Cost Approach; ii) Income Approach; and iii) Direct Comparison Approach.
- ii) If the determination of value finds that the Offer to Sell or the Listing Agreement of the property is at either its most recent assessed value under the Assessment Act (Chapter A-14 of RSNB), or the real and true value as established by the appraisal, using the process established in Section 14(i), the Offer to Sell or the Listing Agreement may continue as if no question had been raised.
- iii) If the determination of value finds that the Offer to Sell or the Listing Agreement of the property is at a price in excess of either its most recent assessed value under the Assessment Act (Chapter A-14 of RSNB), or the real and true value as established by the appraisal, using the process established in Section 14(i), the Offer to Sell or the Listing Agreement shall be void and of no force for the purposes of this Section, and the owner, if he wishes to take advantage of the right provided by Section 12 must file a new Notice of Offer to Sell or Listing Agreement at or below the real and true value under the Assessment Act (Chapter A-14 of RSNB) or the appraisal.
- iv) Notwithstanding any determination of value, if an owner has entered into a binding contract for the sale of the property prior to the date the determination of value is filed with the Board, the selling price shall be deemed to be reasonably related to the fair and true value of the property.

15 **SALE OF PROPERTY**

The owner of a building or structure designated in a Preservation Area identified in Schedule B of this by-law is required to inform the buyer of the owner's property, building or structure that the property is designated in a Preservation Area under this by-law.

16 **MAINTENANCE**

Maintenance as defined by this by-law, of the exterior of a building or structure or appurtenance thereto, is permitted and for the purpose of such maintenance a Certificate of Appropriateness is not required.

17 **SAFETY**

Nothing in this by-law shall be construed so as to affect the demolition of any building that Common Council has found, under the by-law entitled "A By-Law Respecting Dangerous Or Unsightly Premises Within The Town Of Sussex" to be dangerous.

18 **ENFORCEMENT**

- i) Any person who violates or fails to comply with any provision of this by-law save and exempt Section (7) of this by-law commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category C offence.
- ii) Any person who violates or fails to comply with Section (7) of this by-law commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category E offence
- iii) Notwithstanding the provisions of 18(i), where a person is charged in Provincial Court with a violation and that person complies with this by-law after the swearing of the information but prior to the entry of a plea before the Court, the Town will have the information withdrawn from the Court.

19 PLURAL OR FEMININE TERMS

Plural or feminine terms may apply whenever the singular, masculine or feminine is used in this By-law. It shall be considered as if the plural, feminine or masculine has been used where the context of the party of parties hereto so requires.

20 VALIDITY

The invalidity of any section, clause, sentence or provision of this By-law shall not affect the validity of any other part of this by-law which can be given effect without such invalid part or parts.

21 REPEAL

- i) A By-law entitled "Town of Sussex Preservation Area, By-law #452-99," enacted August 23, 1999 and amendments thereto is hereby repealed.
- ii) A repeal of the by-law designated in 21(i) thereof shall not affect any penalty, forfeiture or liability, incurred before such repeal or any proceeding for enforcing the same completed or pending at the time of repeal, nor shall it repeal, defeat, disturb, invalidate or prejudicially affect any matter of thing whatsoever completed, existing or pending at the time of repeal.

READ FIRST TIME BY TITLE: _____ August 24, 2009

READ SECOND TIME BY TITLE: _____ August 24, 2009

READ IN ENTIRETY _____ September 28, 2009

READ THIRD TIME BY TITLE
AND ENACTED: _____ September 28, 2009

PAUL I. MAGUIRE
TOWN CLERK

RALPH A. CARR
MAYOR

SCHEDULE "A"

TOWN OF SUSSEX PRESERVATION AREA BY-LAW

NOTICE

A Notice of Offer to Sell a property pursuant to Sections 12 shall be in accordance with the following guidelines:

The advertisement shall:

- ◆ appear in the real estate section of the newspaper;
- ◆ be one column in width;
- ◆ have at the top of the ad a headline in 24 pt. type, in capitals, saying SUSSEX PRESERVATION AREA;
- ◆ 8 pt. Type in the text of the ad;
- ◆ identify the property and its location;
- ◆ state the offering price;
- ◆ state the date the offer to sell is to begin; and
- ◆ include a black and white photograph of the property, to be the width of the column by whatever necessary height.

SCHEDULE "B"

TOWN OF SUSSEX PRESERVATION AREA(S)

The following properties are designated Preservation Area(s) in accordance with Section 4 (b) of this by-law:

| STREET # | STREET NAME | PID NUMBER |
|-----------------|--------------------|-------------------|
| | | |
| 524 | MAIN STREET | PID 00268748 |
| | | |
| 66/72 | BROAD STREET | PID 30178933 |
| | | |
| 65 | CHURCH AVENUE | PID 00260299 |
| | | |

SCHEDULE "C"

CERTIFICATE OF APPROPRIATENESS

Certificate of Appropriateness

Town of Sussex

No.



Town of Sussex Preservation Board
524 Main Street
Sussex, NB
E4E 3E4

PRESERVATION
PLANNING

This Certificate of Appropriateness is issued by authority of the Municipal Heritage Act and the Town of Sussex Preservation By-Law to carry out the following work:

| |
|---------|
| Name |
| _____ |
| Address |
| _____ |
| PID # |
| _____ |

Scope of Work:

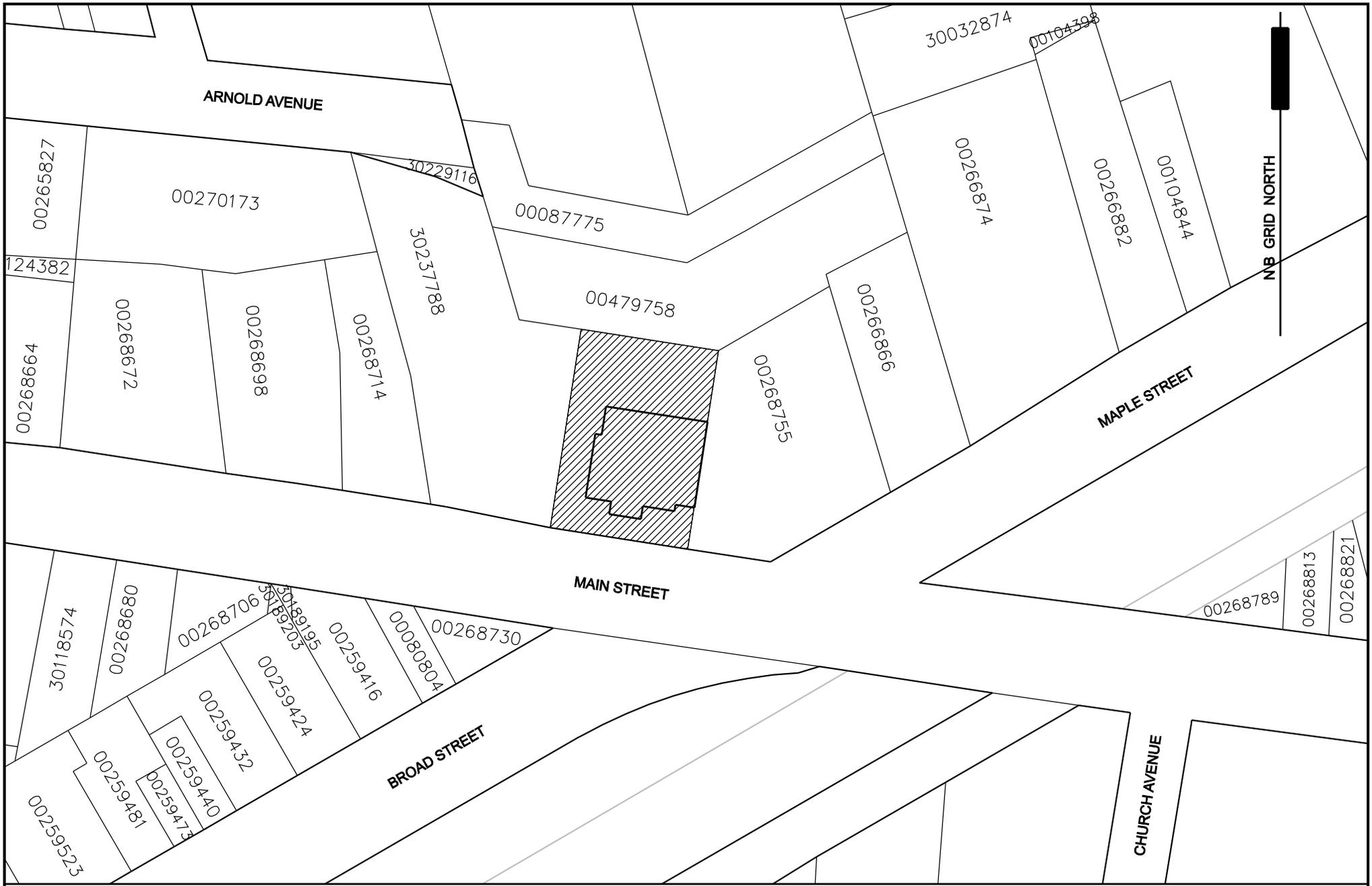
This work to be carried out under the following conditions:

1. The proposed work to be carried out using traditional detailing and materials as required under Section 10 of the Town of Sussex Preservation By-law
2. The Buildings & Inspections Services Department be contacted for necessary permits, and
3. No work shall commence until expiry of a fifteen day appeal period pursuant to Section 15(2) of the Act, and providing no appeal is filed with the Provincial Appeal Board on or before

_____.

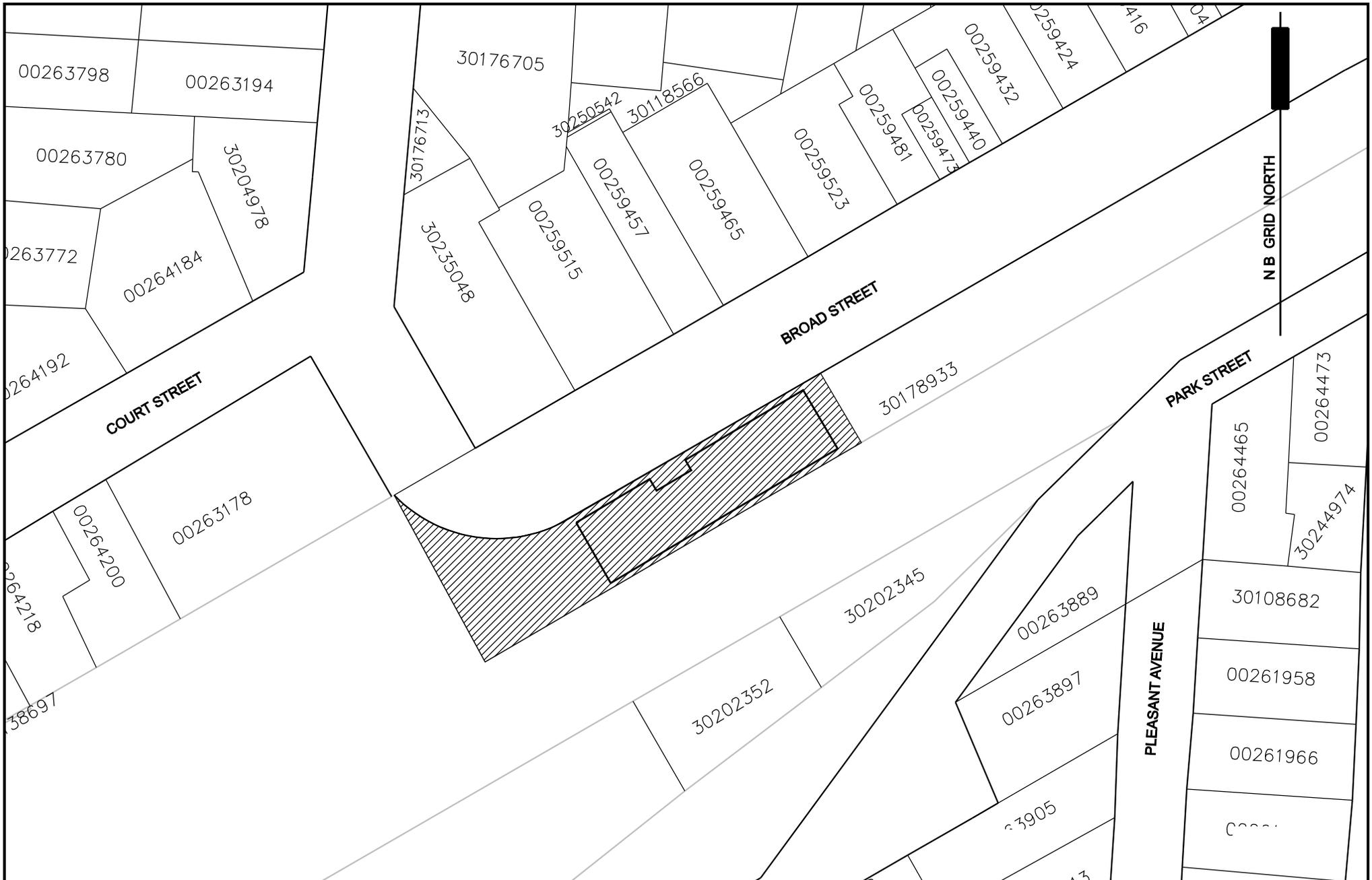
Preservation Board Chairperson

Date



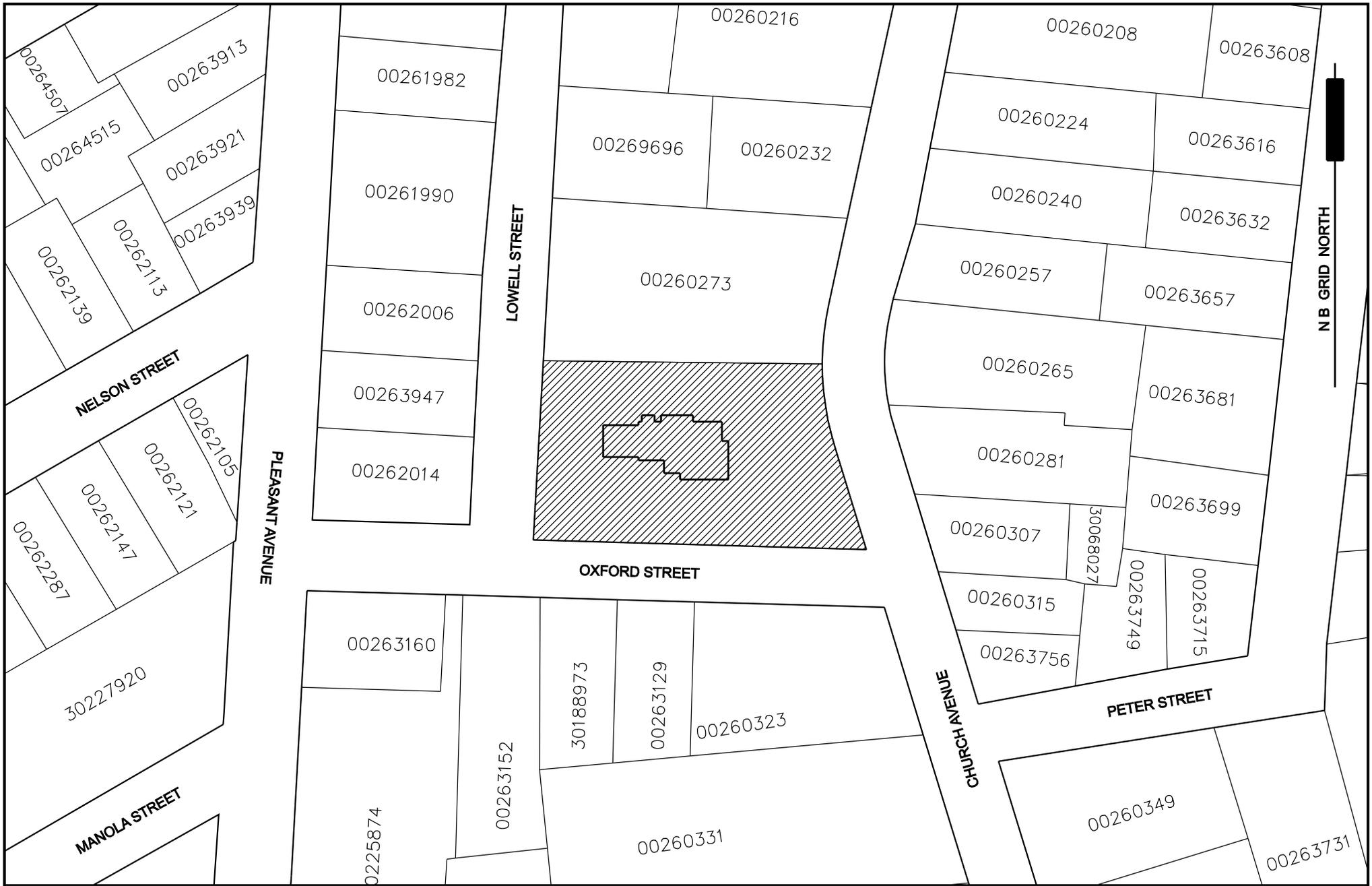
SCHEDULE "B"
TOWN OF SUSSEX PRESERVATION AREA
524 MAIN STREET
P.I.D. # 00268748

SCALE 1:1000



SCHEDULE "B"
TOWN OF SUSSEX PRESERVATION AREA
66-72 BROAD STREET
P.I.D. # 30178933

SCALE 1:1000



SCHEDULE "B"
TOWN OF SUSSEX PRESERVATION AREA
65 CHURCH AVENUE
P.I.D. # 00260299

SCALE 1:1000